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TITLE 8 SOCIAL SERVICES
CHAPTER 202 MEDICAID ELIGIBILITY - JUL MEDICAID
PART 400 RECIPIENT REQUIREMENTS

8.202.400.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.202.400.1 NMAC - Rp, 8.202.400.1 NMAC, 1-1-14]

8.202.400.2 SCOPE: The rule applies to the general public.
[8.202.400.2 NMAC - Rp, 8.202.400.2 NMAC, 1-1-14]

8.202.400.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.
[8.202.400.3 NMAC - Rp, 8.202.400.3 NMAC, 1-1-14]

8.202.400.4 DURATION: Permanent.
[8.202.400.4 NMAC - Rp, 8.202.400.4 NMAC, 1-1-14]

8.202.400.5 EFFECTIVE DATE: January 1, 2014, unless a later date is cited at the end of a section.
[8.202.400.5 NMAC - Rp, 8.202.400.5 NMAC, 1-1-14]

8.202.400.6 OBJECTIVE: The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Generally, applicable eligibility rules are detailed in the medical assistance division (MAD) eligibility policy manual, specifically 8.200.400 NMAC, *General Medicaid Eligibility*. Processes for establishing and maintaining medicaid eligibility are detailed in the income support division (ISD) general provisions 8.100 NMAC, *General Provisions for Public Assistance Programs*.
[8.202.400.6 NMAC - Rp, 8.202.400.6 NMAC, 1-1-14]

8.202.400.7 DEFINITIONS: [RESERVED]

8.202.400.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.202.400.8 NMAC - Rp, 8.202.400.8 NMAC, 1-1-14]

8.202.400.9 WHO CAN BE AN ELIGIBLE RECIPIENT:

- A. An applicant or an eligible recipient must meet specific eligibility requirements. These include:
- (1) a child under 19 years of age;
 - (2) a natural or adoptive parent of the child, provided he or she lives with the eligible recipient child; there is a presumption that a child born to a married woman is the child of the spouse, or if the individual established parentage by some other legally recognized process;
 - (3) when the parent does not live with the child, one specified relative caretaker, within the fifth degree of relationship by blood, marriage or adoption; refer to the relationship section at the end of this part for more information;
 - (4) a woman whose third trimester pregnancy has been medically verified through documentary evidence;
 - (5) an individual who meets the following eligibility requirements pursuant to 8.200.410 NMAC and 8.200.420 NMAC of citizenship or alien status; enumeration; residence; non-concurrent receipt of assistance; and applications for other benefits;
 - (6) an applicant or eligible recipient must assign medical support rights to HSD and agree to cooperate with third party liability responsibilities pursuant to 8.200.430 NMAC; and
 - (7) appropriate to the size of the budget group (not including the ineligible parent due to citizenship or alien status or enumeration), countable gross income must be less than 85 percent of the federal poverty limit (FPL); and the countable net income must be less than the standard of need (SON) pursuant to 8.200.520 NMAC, and 8.202.500 NMAC.
- B. An applicant or an eligible recipient may have other creditable health insurance coverage.

- C. An individual who is an inmate of a public institution is not eligible pursuant to 8.200.410 NMAC.
- D. For medical assistance program applicants or re-determining recipients who are recipients of another type of income support division (ISD) benefits, the following will not be used in as automatic disqualification from medical assistance programs enrollment:
- (1) New Mexico works (NMW) cash assistance eligibility;
 - (2) disqualifications for dual state public assistance benefits resulting in a conviction of fraud; or
 - (3) disqualifications for fugitive and probation parole violators.

[8.202.400.9 NMAC - Rp, 8.202.400.9 NMAC, 1-1-14]

8.202.400.10 BASIS FOR DEFINING THE ASSISTANCE UNIT AND BUDGET GROUP:

A. At time of application, an applicant and a re-determining eligible recipient and ISD shall identify everyone who is to be considered for inclusion in the assistance unit and budget group. The composition of the assistance unit and budget group is based on the relationship of the household members to the dependent child for whom the application is being made. Each member of the assistance unit and budget group, including an unborn child, is counted as one in the household size.

B. The budget group includes all members of the assistance unit. Additional budget group members include individuals who live in the household with the assistance unit and have a financial obligation of support.

- (1) Except for a supplemental security income (SSI) recipient, the following individuals have a financial obligation of support for medicaid eligibility:
 - (a) spouses: married individuals as defined under applicable New Mexico state law (New Mexico recognizes common law and same sex marriages established in other states); and
 - (b) parents for children: there is a presumption that a child born to a married woman is the child of the spouse, or if the individual established parentage by some other legally recognized process.
- (2) The following individuals do not have a financial obligation of support for medicaid eligibility:
 - (a) an SSI recipient to the assistance unit;
 - (b) a father of the unborn child who is not married to the pregnant woman;
 - (c) a stepparent to a stepchild;
 - (d) a grandparent to a grandchild;
 - (e) a legal guardian or conservator of a child;
 - (f) an alien sponsor to the assistance unit; and
 - (g) a sibling to a sibling.

[8.202.400.10 NMAC - Rp, 8.202.400.10 NMAC, 1-1-14]

8.202.400.11 ELIGIBLE MEMBERS: The assistance unit includes individuals who apply and who are determined eligible.

A. **The dependent child assistance unit:** Certain individuals may be included in the assistance unit, provided they live together and meet eligibility requirements. Those individuals are:

- (1) the dependent child and full, half, step or adoptive siblings;
- (2) the natural or adoptive parents of a child; there is a presumption that a child born to a married woman is the child of the spouse, or if the individual established parentage by some other legally recognized process; and
- (3) when the parent does not live with the child, one specified relative caretaker, within the fifth degree of relationship by blood, marriage or adoption, refer to Section 13 of this rule.

B. **The adult-only assistance unit:**

(1) When the dependent child is receiving supplemental security insurance (SSI), the eligible parent or a specified relative when the parents are not living with the child, may constitute an adult-only assistance unit. The spouse of a parent (step-parent) and the spouse of the specified relative are not eligible to be included in the assistance unit. Spouse refers to a person who is married to the individual under applicable state law.

- (2) A pregnant woman in her third trimester who has no dependent child living with her may constitute an adult only assistance unit when:
 - (a) each unborn child is counted as one as if the child was born and living with the mother; and
 - (b) the child is born, regardless of marital status, the father, if living with the assistance unit, may be a member of the assistance unit.

[8.202.400.11 NMAC - Rp, 8.202.400.11 NMAC, 1-1-14]

8.202.400.12 SANCTIONED MEMBERS: New Mexico works', child support enforcement division (CSED),

and work sanctions do not apply to JUL medicaid eligibility.
[8.202.400.12 NMAC - Rp, 8.202.400.12 NMAC, 1-1-14]

8.202.400.13 LIVING ARRANGEMENTS:

A. **Living in the home with a relative:** To be included in the assistance unit, a child must be living, or considered to be living, in the home of:

- (1) a natural or an adoptive parent; there is a presumption that a child born to a married woman is the child of the spouse, or if the individual established parentage by some other legally recognized process; or
- (2) a specified relative who is related within the fifth degree of relationship by blood, marriage or adoption and assumes responsibility for the day-to-day care and control of the child; the determination of whether an individual functions as the specified relative shall be made by the specified relative unless other information known to the worker clearly indicates otherwise.

B. **A child considered to be living in the home:** A child is considered to be part of the assistance unit as evidenced by the child's customary physical presence in the home. If a child is living with more than one household, the following applies:

- (1) when the child is actually spending more time with one household than the other, the child would be determined to be living with the household with whom the child spends the most time; or
- (2) when the child is actually spending equal amounts of time with each household, the child shall be considered to be living with the household who first applies for medicaid enrollment.

C. **Extended living in the home:** An individual may be physically absent from the home for longer or shorter periods of time and be a member of the assistance unit and budget group. Extended living in the home includes:

- (1) an individual attending college or a boarding school; or
- (2) an individual receiving treatment in a Title XIX medicaid facility including institutions that meet a nursing facility (NF) level of care (LOC) and intermediate care facilities for individuals with an intellectual disability (ICF-IID) LOC; when an individual has been a member of the assistance unit, eligibility for another medicaid eligibility category, such as long term care medicaid, should be evaluated; until a determination of eligibility for another category can be made, the individual is considered to be living with the budget group.

D. **Temporary absence - extended living in the home:** An individual may be physically absent from the home and be a member of the assistance unit and budget group. These other temporary absences include:

- (1) an individual not living in the home due to an emergency who is expected to return to the household within 60 calendar days, continues to be a member of the household;
- (2) a child removed from the home of a parent or a specified relative by a child protective services agency (tribal, bureau of Indian affairs, or children, youth and families department), until an adjudicatory custody hearing takes place; if the adjudicatory hearing results in custody being granted to some other entity, the child will be removed from the assistance unit; or
- (3) a child residing in a detention center:
 - (a) continues to be a member of the household if he or she resides fewer than 60 calendar days, regardless of any adjudication as an inmate of a public institution; or
 - (b) the individual is not eligible for medicaid enrollment if he or she resides 60 calendar days or more as an adjudicated inmate of a public institution pursuant to 8.200.410 NMAC.

E. **Relationships:**

- (1) The following relatives are within the fifth degree of relationship to the dependent child:
 - (a) a father (biological or adoptive);
 - (b) a mother (biological or adoptive);
 - (c) a grandfather, great grandfather, great great grandfather, great great great grandfather;
 - (d) a grandmother, great grandmother, great great grandmother, great great great grandmother;
 - (e) a spouse of child's parent (stepparent);
 - (f) a spouse of child's grandparent, great grandparent, great great grandparent, great great great grandparent (step grandparent);
 - (g) a brother, half-brother, brother-in-law, step-brother;
 - (h) a sister, half-sister, sister-in-law, step-sister;
 - (i) an uncle of the whole or half-blood, uncle-in-law, great uncle, great great uncle;
 - (j) an aunt of the whole or half-blood, aunt-in-law, great aunt, great great aunt;
 - (k) a first cousin and spouse of first cousin;
 - (l) a son or daughter of first cousin (first cousin once removed);

- (m) a son or daughter of great aunt or great uncle (first cousin once removed) and spouse; and
- (n) a nephew or niece and spouses.

(2) A second cousin is a child of a first cousin once removed or child of a child of a great aunt or uncle and is not within the fifth degree of relationship.

(3) Effect of divorce or death on relationship: A relationship based upon marriage, such as the "in-law" or "step" relationships, continues to exist following the dissolution of the marriage by divorce or death.

(4) Table of relationships: Below is the table of relationship based on the uniform probate code, see NMSA 1978, Section 45-1-101 et. seq. The relationships marked through with an "X" are not within the fifth degree of relationship.

					5 Great-great- great grandparents
				4 Great-great grandparents	X
			3 Great grandparents	5 Great-grand uncles and aunts	
		2 Grandparents	4 Great aunt great uncle	X	
	1 Parents	3 Aunt or uncle	5 First cousin once-removed		
Dependent child	2 Siblings	4 First cousins	X		
X	3 Nephew or niece	5 First cousin once-removed			
	4 Grand nephew grand niece	X			
	5 Great grand nephew or niece				
	X				

[8.202.400.13 NMAC - Rp, 8.202.400.13 NMAC, 1-1-14]

8.202.400.14 GENERAL RECIPIENT REQUIREMENTS: Refer to 8.202.400.9 NMAC.

[8.202.400.14 NMAC - Rp, 8.202.400.14 NMAC, 1-1-14]

8.202.400.15 CITIZENSHIP: Refer to 8.200.410.11 NMAC.

[8.202.400.15 NMAC - Rp, 8.202.400.15 NMAC, 1-1-14]

8.202.400.16 WORK PROGRAMS - GENERAL: Refer to 8.202.400.9 NMAC.

[8.202.400.16 NMAC - Rp, 8.202.400.16 NMAC, 1-1-14]

8.202.400.17 [RESERVED]

8.202.400.18 PROGRAM DISQUALIFICATIONS:

A. **Dual state benefits:** Any individual who has been convicted of fraud for receiving temporary assistance for needy families (TANF), supplemental nutritional assistance program (SNAP), medicaid, or SSI in more than one state at the same time is not eligible for inclusion in the JUL medicaid assistance group for a period of 10 years following such conviction. The conviction must have occurred on or after August 22, 1996.

B. **Fugitive and probation and parole violators:** An individual who is a fugitive felon or who has been determined to be in violation of conditions of probation or parole is not eligible for inclusion in the JUL medicaid assistance group.

[8.202.400.18 NMAC - Rp, 8.202.400.18 NMAC, 1-1-14]

8.202.400.19 TERM LIMITATIONS: TANF term limits are not applicable to JUL medicaid. Individuals who meet all criteria for JUL medicaid eligibility, but who are ineligible for NMW solely on the basis of TANF term limits, may continue to receive JUL medicaid.

[8.202.400.19 NMAC - Rp, 8.202.400.19 NMAC, 1-1-14]

8.202.400.20 SPECIAL RECIPIENT REQUIREMENTS:

A. **Age:** Refer to 8.202.400.9 NMAC.

B. **Continuing eligibility on the factor of age:** When an individual has been determined eligible on the condition of age, he or she remains eligible on the condition until the applicable upper age limit is reached. An individual who exceeds the age limit during a given month is eligible for that month, unless the birthday is the first day of the month.

[8.202.400.20 NMAC - Rp, 8.202.400.20 NMAC, 1-1-14]

8.202.400.21 SCHOOL ATTENDANCE - REQUIREMENT: School attendance is required for children who are 18 years of age. There is no school requirement for children under age 18. A child 18 years of age must be a full-time student at a certified educational facility or participating and fully complying with a home-schooling program approved by the New Mexico public education department. Whether a child is considered a full-time student and meeting full-time attendance requirements is based on the standards of the educational facility or program in which the child is enrolled. Children who have received a general equivalency development (GED) certificate or are early high school graduates are considered to have met school attendance requirements and continue to be JUL medicaid eligible until age 19. School attendance requirements are evaluated only at the time of JUL medicaid application or recertification.

[8.202.400.21 NMAC - Rp, 8.202.400.21 NMAC, 1-1-14]

8.202.400.22 [RESERVED]

8.202.400.23 ALIEN SPONSORSHIP: Alien sponsor deeming provisions are set forth in manual section 8.200.410.11 NMAC.

[8.202.400.23 NMAC - Rp, 8.202.400.23 NMAC, 1-1-14]

8.202.400.24 LIVING IN A PUBLIC INSTITUTION: Refer to 8.200.410.15 NMAC.

[8.202.400.24 NMAC - Rp, 8.202.400.24 NMAC, 1-1-14]

8.202.400.25 RECIPIENT RIGHTS AND RESPONSIBILITIES: Refer to 8.200.430 NMAC.

[8.202.400.25 NMAC - Rp, 8.202.400.25 NMAC, 1-1-14]

8.202.400.26 ASSIGNMENT OF MEDICAL SUPPORT: Refer to 8.200.420.12 NMAC.

[8.202.400.26 NMAC - Rp, 8.202.400.26 NMAC, 1-1-14]

8.202.400.27 REPORTING REQUIREMENTS: Refer to 8.200.430.19 NMAC.
[8.202.400.27 NMAC - Rp, 8.202.400.27 NMAC, 1-1-14]

HISTORY OF 8.202.400 NMAC:

History of Repealed Material:

8.202.400 NMAC, Recipient Policies, filed 6-14-01 - Repealed effective 1-1-14.